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December 28, 2011

By ECF & Hand

The Honorable Kiyo A. Matsumoto  
United States District Judge  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Neil Messina, et al.  
11 Cr. 31 (KAM)

Dear Judge Matsumoto:

I write in response to the just-filed letter (docket entry # 126) of Assistant United States Attorney Elizabeth Geddes, which accuses me (in footnote one) of breaching an agreement reached with the government. AUSA Geddes, who was not a party to the agreement, is, at best, misinformed.

On Friday, December 16, 2011 at 6:54 p.m., I emailed a request to AUSA Allon Lifshitz and PTS Officer Leo Barrios seeking consent for Mr. Messina to 1) attend Mass every Sunday; 2) spend Christmas Eve at his brother's house; and 3) spend New Year's Eve at his girlfriend's house.

On Sunday, December 18, 2011 at 7:03 p.m., AUSA Lifshitz emailed me that "We do not consent to any of these modifications." After AUSA Lifshitz learned that PTS Officer Barrios consented to the requests even in the face of the government's position, he (AUSA) and I exchanged emails and had at least one phone conversation on Monday, December 19<sup>th</sup> wherein we agreed that the government would consent to Christmas Eve, the question of New Year's Eve would be deferred to the following week, and I agreed not to seek permission for Mr. Messina to attend Sunday mass for one month.

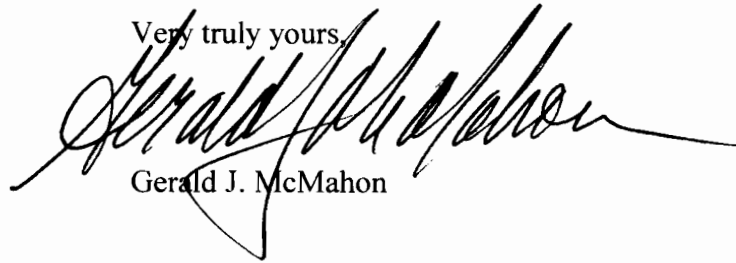
At not time did I agree **not** to seek permission for Mr. Messina to spend New Year's Eve at the home of Michele Capasso.

GERALD J. McMAHON

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The government's other arguments with respect to bail are a rehash of their rejected motions for detention. Their impatience with Mr. Messina's bail requests, which "are increasing in frequency", is, however, clairvoyant. *At the suggestion of PTS Officer Barrios*, I had intended – and do intend – in the beginning of the new year to formally move for an end of house arrest and the imposition of a curfew.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald J. McMahon", written over a horizontal line.

Gerald J. McMahon

GJM:cw  
cc: All Counsel (by ECF)  
PTS Officer Leo Barrios (by email)